U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-J-L-

DATE: OCT. 30, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a computer science researcher, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) § 203(b)(2), 8 U.S.C. § 1153(b)(2). The Director, Texas Service Center, denied the immigrant visa petition. The matter is now before us on appeal. The appeal will be sustained.

The Petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The Director found that the Petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the Petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States. On appeal, the Petitioner submits a brief.

I. LAW

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

II. ISSUES

The Petitioner received a Ph.D. in Computer Science and Engineering from [redacted] in Taiwan in 2010. Accordingly, the Petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the Petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest. Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." *Matter of New York State Dep't of Transp.* (*NYSDOT*), 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that he seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must demonstrate that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must show that he will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

III. FACTS AND ANALYSIS

The Petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on February 14, 2014. The Director determined that the Petitioner's work as a computer science researcher is in an area of substantial intrinsic merit. In addition, the Director found that the Petitioner's past record of achievement demonstrates that he will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. The evidence of record supports the Director's findings that the Petitioner satisfies the first and third prongs of the *NYSDOT* national interest analysis.

With respect to the third prong of the *NYSDOT* analysis, we affirm the Director's determination that the Petitioner's work has had a degree of influence on the field as a whole. *Id.* at 219, n.6. For example, the Petitioner submitted letters of support from others in the field that give context to his past research and explain its importance in ways that the record otherwise supports. In addition, the Petitioner submitted documentation showing that several of his published articles have been extensively cited by independent researchers. An extensive number of favorable independent citations for an article authored by a petitioner is an indication that other researchers are familiar with his work and have been influenced by it. This track record of success, together with the evidence regarding the Petitioner's plans to expand on his past research, justify a projection that that the Petitioner will serve the national interest to a significantly greater degree than would an available U.S. worker having the same minimum qualifications.

It remains, then, to determine whether the Petitioner has demonstrated that the proposed benefit of his work would be national in scope. With regard to the second prong of the *NYSDOT* test, the Director determined that the proposed benefit of the Petitioner's computer science research would not be national in scope. The Director stated that although the Petitioner had "presented plans of a general nature on research in computer science," the Petitioner did not establish that his "services will extend nationally in scope." The Director noted the lack of "concrete plans or pre-arranged activities set in place" in the form of "substantive letters, pre-arranged or proposed plans, activities, or contracts from prospective employers in the United States."

On appeal, the Petitioner asserts that the Director misinterpreted *NYSDOT*, and that the statute and regulations "make clear that the national interest waiver exempts [the Petitioner] from the requirement that [his] services be sought by a U.S. employer." We agree with the Petitioner's observations. The second prong of the *NYSDOT* analysis requires only that the proposed benefit of the Petitioner's work will be national in scope and that his occupation will serve the national interest. *See NYSDOT*, 22 I&N Dec. at 217. The plain language of section 203(b)(2)(B) of the Act waives the requirement of a job offer and evidence establishing that the Petitioner's services are sought by a specific U.S. employer. Nevertheless, while no job offer is required for the classification sought, there is a requirement for prospective national benefit to the United States. Accordingly, the Director was justified in evaluating the Petitioner's future employment plans, but not to the point of requiring an actual job offer, "concrete plans or pre-arranged activities set in place," or "contracts from prospective employers in the United States."

In response to the Director's request for evidence, the Petitioner submitted a detailed "Research Plan" that stated, in part:

> My current research focuses on polynomial arithmetic over finite fields. The major application of this research is in error code, which improves the reliability of data transmission over unreliable communication channels, and cryptography, which obviously has uses for civilian, military, and corporate applications in data protection methods. . . . I intend to use my knowledge to continue my research in this area by designing new algorithms . . . with the goal of writing programs that can be used in practical applications.

In addition to having published 18 journal articles at the time of filing the Form I-140, the record reflects that the Petitioner has recently authored articles in [redacted] (2014) and [redacted] (2015). The Petitioner's proposed research concerning coding schemes that improve data transmission and cryptographic technologies would substantially benefit the U.S. information technology and telecommunications industries. Accordingly, the Petitioner's research offers both economic and technological benefits on a national scale. For example, [redacted] an associate professor in the Department of Electrical and Computer Engineering at [redacted] stated: "Taken together, [the Petitioner's] individual projects represent some of the latest investigations and discoveries in cryptography, discoveries that are leading the way in computer science." As the submitted documentation is sufficient to demonstrate that the proposed benefits of Petitioner's research to devise encoding and decoding technologies are national in scope, the Director's finding on this issue is withdrawn.

IV. CONCLUSION

The Petitioner has established that the proposed benefits of his work will be national in scope. The evidence in the record demonstrates that the benefit of the Petitioner's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the Petitioner has established that a waiver of the requirement of the job offer and labor certification will be in the national interest of the United States.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has been met.

ORDER: The appeal is sustained.

Cite as *Matter of S-J-L-*, ID# 14260 (AAO Oct. 30, 2015)